

House Amendment 1259

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1 1 Amend House File 448 as follows:
1 2 #1. Page 2, by inserting after line 29 the
1 3 following:
1 4 . NEW SECTION. 545A.1 TITLE.
1 5 This chapter shall be known and may be cited as the
1 6 "Iowa Auction and Auctioneer Licensing Act".
1 7 Sec. . NEW SECTION. 545A.2 DEFINITIONS.
1 8 1. "Associate auctioneer" means a person who acts
1 9 as an auctioneer, but who is under the direct
1 10 supervision of a licensed auctioneer or auction
1 11 service.
1 12 2. "Auction" means the sale of property, real or
1 13 personal, by public outcry, in which the sale price of
1 14 the property offered is increased until the highest
1 15 accepted bidder becomes the purchaser.
1 16 3. "Auction clerk" or "auction cashier" means a
1 17 person who, with or without receiving or collecting a
1 18 fee, commission, or other valuable consideration,
1 19 collects, accounts for, or distributes proceeds from
1 20 an auction.
1 21 4. "Auction service" means a person who engages in
1 22 the business of arranging, managing, sponsoring,
1 23 advertising, or conducting auctions.
1 24 5. "Auctioneer" means a person who, as a bid
1 25 caller, sells or offers to sell property with or
1 26 without receiving or collecting a fee, commission, or
1 27 other valuable consideration.
1 28 6. "Certified auction school" means a public or
1 29 private educational institution offering a curriculum
1 30 of auctioneer education and training approved by the
1 31 commission.
1 32 7. "Commission" means the Iowa auction and
1 33 auctioneer commission established in section 545A.3.
1 34 8. "Licensee" means a person licensed under this
1 35 chapter.
1 36 9. "Person" means as defined in section 4.1.
1 37 10. "Property" means anything of value, and
1 38 includes any interest in property, including any
1 39 benefit, privilege, claim, or right with respect to
1 40 anything of value, whether real or personal, tangible
1 41 or intangible, which may be kept or offered for sale.
1 42 11. "Secured party" means as defined in section
1 43 554.9102.
1 44 12. "Trust account" means an account in a
1 45 federally insured financial institution used for the
1 46 deposit and disbursement of the proceeds of an
1 47 auction.
1 48 Sec. . NEW SECTION. 545A.3 IOWA AUCTION AND
1 49 AUCTIONEER COMMISSION ESTABLISHED == MEMBERS ==
1 50 DUTIES.
2 1 1. An Iowa auction and auctioneer commission is
2 2 established within the professional licensing and
2 3 regulation division of the department of commerce.
2 4 2. Members of the commission shall be appointed by
2 5 the governor and subject to confirmation by the senate
2 6 pursuant to section 2.32.
2 7 3. The commission shall consist of five voting
2 8 members as follows:
2 9 a. Four members who represent auctioneers, auction
2 10 clerks and auction cashiers, associate auctioneers,
2 11 and auction services. An individual appointed
2 12 pursuant to this paragraph must be a licensee.
2 13 b. One member who shall represent the public. An
2 14 individual appointed pursuant to this paragraph must
2 15 not be or have been a licensee under this chapter or
2 16 have engaged in any manner in the auction profession.
2 17 4. Members of the commission shall serve three=
2 18 year staggered terms as designated by the governor
2 19 consistent with this section and appointments to the
2 20 commission are subject to the requirements of sections
2 21 69.16, 69.16A, and 69.19. A member of the commission
2 22 shall serve no more than two consecutive terms, not
2 23 including any partial term which the member is
2 24 appointed to fill as the result of a vacancy.

2 25 Vacancies shall be filled by the governor for the
2 26 duration of the unexpired term in the same manner as
2 27 provided for other appointments.
2 28 5. A member of the commission is entitled to be
2 29 reimbursed for all actual and necessary expenses
2 30 incurred in performance of duties as a member. A
2 31 member of the commission shall also receive a per diem
2 32 as specified in section 7E.6 for each day spent in
2 33 performance of duties as a member.
2 34 6. A quorum shall consist of a majority of the
2 35 members of the commission.
2 36 7. Members of the commission shall elect a
2 37 chairperson and vice chairperson annually and other
2 38 officers as they determine.
2 39 8. The commission shall meet as often as
2 40 necessary, but at least once during each calendar
2 41 quarter. Meetings shall be set by a majority of the
2 42 commission or upon the call of the chairperson.
2 43 Sec. _____. NEW SECTION. 545A.4 DUTIES OF THE
2 44 COMMISSION.
2 45 1. The commission shall adopt rules pursuant to
2 46 chapter 17A establishing licensing requirements and
2 47 other rules necessary to administer and enforce this
2 48 chapter. The commission shall consider proposed rules
2 49 recommended by a commission member, a member of the
2 50 general public, or a professional auction
3 1 organization. The commission may publish guidelines
3 2 to provide clarification and explanation of adopted
3 3 rules.
3 4 2. The commission shall maintain a registry of the
3 5 names and addresses of auctioneers, associate
3 6 auctioneers, auction clerks, and auction services
3 7 licensed under this chapter. The commission shall
3 8 retain records and application materials submitted to
3 9 the commission.
3 10 3. The commission shall establish the licensing
3 11 requirements for each type of license, provide
3 12 appropriate examinations, establish procedures for
3 13 grading examinations, receive and approve or
3 14 disapprove applications for licensing, and issue
3 15 licenses.
3 16 An applicant for an auctioneer, associate
3 17 auctioneer, auction clerk or auction cashier, or
3 18 auction service license shall provide evidence that
3 19 the applicant has working knowledge of current auction
3 20 marketing theories, practices, and techniques which
3 21 will enable the applicant to provide high-quality
3 22 service and protection to members of the public.
3 23 4. The commission shall establish continuing
3 24 education requirements for licensees and monitor
3 25 compliance with the established requirements. The
3 26 basic continuing education requirement for renewal of
3 27 a license shall be the completion, during the
3 28 immediately preceding licensure term, of the number of
3 29 classroom hours of instruction required by the
3 30 commission in courses or seminars approved by the
3 31 commission.
3 32 Participation in continuing education for license
3 33 renewal is mandatory, except for nonresident licensees
3 34 whose nonresident license is issued by reciprocity
3 35 with the nonresident's state of residence. A
3 36 nonresident licensee whose state does not have a
3 37 substantially similar licensing requirement shall
3 38 fulfill the mandatory continuing education
3 39 requirements established pursuant to this section.
3 40 Sec. _____. NEW SECTION. 545A.5 LICENSE FEES.
3 41 1. The commission shall establish and collect a
3 42 reasonable fee for a license application, examination,
3 43 reexamination, issuance of a license, renewal of a
3 44 license, and any delinquency fee sufficient to pay for
3 45 the costs of administration and implementation of this
3 46 chapter. The fees shall include, but are not limited
3 47 to, amounts to cover the cost for the following items:
3 48 a. Per diem and necessary expenses for commission
3 49 members.
3 50 b. Office facilities, staff assistance, supplies,
4 1 and equipment of the commission.
4 2 2. Fees collected by the commission shall be
4 3 transmitted to the treasurer of state and shall be
4 4 deposited in the auctioneer recovery and education
4 5 fund established in section 545A.12. Moneys in the

4 6 fund are appropriated to and shall be used by the
4 7 commission consistent with this chapter.

4 8 Sec. ____ NEW SECTION. 545A.6 LICENSE
4 9 REQUIREMENTS.

4 10 1. An application for a license, renewal of a
4 11 license, or an examination shall be made in writing to
4 12 the commission on forms approved by the commission.

4 13 2. Prior to the adoption of rules by the
4 14 commission, the commission may issue an interim
4 15 license to a qualified applicant. An interim license
4 16 shall not be issued or renewed following the adoption
4 17 of licensure rules by the commission.

4 18 3. Except as otherwise provided in this chapter, a
4 19 person shall not act as an auctioneer, associate
4 20 auctioneer, auction clerk or auction cashier, or
4 21 auction service in this state unless that person holds
4 22 a license issued under this chapter.

4 23 4. A person is eligible for an auctioneer's
4 24 license if the applicant satisfies all of the
4 25 following:

4 26 a. The applicant is at least eighteen years of
4 27 age.

4 28 b. The applicant is a citizen of the United States
4 29 or a legal alien.

4 30 c. The applicant does one of the following:

4 31 (1) Passes a written or oral examination offered
4 32 pursuant to section 545A.7 demonstrating the
4 33 applicant's knowledge of auctioneering and the laws
4 34 pertaining to auctioneering.

4 35 (2) Shows proof that the applicant has legally
4 36 performed as an auctioneer in at least five auctions
4 37 prior to the date of application.

4 38 (3) Shows proof that the applicant has
4 39 successfully completed a course of study at a
4 40 certified auction school.

4 41 5. A person is eligible for an associate
4 42 auctioneer's license if the applicant satisfies both
4 43 of the following:

4 44 a. The applicant is a citizen of the United States
4 45 or a legal alien.

4 46 b. The applicant is employed under the direct
4 47 supervision of an auctioneer or auction service
4 48 licensed pursuant to this chapter.

4 49 6. A person is eligible for an auction clerk or
4 50 auction cashier license if the applicant satisfies all
5 1 of the following:

5 2 a. The applicant is at least eighteen years of
5 3 age.

5 4 b. The applicant is a citizen of the United States
5 5 or a legal alien.

5 6 c. The applicant has not been convicted of a
5 7 felony.

5 8 d. The applicant does one of the following:

5 9 (1) Passes a written examination offered pursuant
5 10 to section 545A.7 demonstrating the applicant's
5 11 knowledge of the position of auction clerk or auction
5 12 cashier, acceptable accounting methodology, and the
5 13 laws pertaining to the position of auction clerk or
5 14 auction cashier.

5 15 (2) Shows proof that the applicant has
5 16 successfully completed a course of study at a
5 17 certified auction school.

5 18 (3) Shows proof that the applicant has legally
5 19 performed as an auction clerk or auction cashier in at
5 20 least five auctions within the previous five years
5 21 prior to application.

5 22 7. An auction service license may be issued for
5 23 the purpose of engaging in the business of arranging,
5 24 managing, sponsoring, advertising, or conducting
5 25 auctions, to a person who satisfies the requirements
5 26 both for licensure as an auctioneer and for licensure
5 27 as an auction clerk or auction cashier.

5 28 8. A licensed auction clerk or auction cashier,
5 29 and a licensed auction service, must hold an Iowa
5 30 retail sales tax permit.

5 31 Sec. ____ NEW SECTION. 545A.7 EXAMINATION
5 32 REQUIREMENTS.

5 33 1. The commission shall prepare license
5 34 examinations for an auctioneer license, auction clerk
5 35 or auction cashier license, and auction service
5 36 license. The commission shall also prepare study and

5 37 reference materials on which the examinations are
5 38 based. The examination for auctioneers, auction
5 39 clerks or auction cashiers, and auction services must
5 40 be designed to establish the applicant's general
5 41 knowledge of the auction profession, the principles of
5 42 conducting an auction, and the laws of this state
5 43 pertaining to auctioneers, auction clerks or auction
5 44 cashiers, and auction services. The license
5 45 examination must be offered at least four times a year
5 46 at locations designated by the commission.

5 47 2. A person seeking to become eligible for an
5 48 auctioneer license, auction clerk or auction cashier
5 49 license, or auction service license by examination
5 50 must apply to the commission to take a license
6 1 examination. The application must be accompanied by
6 2 an examination fee. Upon the receipt of an
6 3 examination application with the required fee, the
6 4 commission shall furnish the applicant with study
6 5 materials and references on which the examination will
6 6 be based and a schedule specifying the dates and
6 7 places the examination will be offered. The applicant
6 8 may take the examination at any scheduled offering
6 9 within ninety days after receipt of the study
6 10 materials. If an applicant fails the examination, the
6 11 applicant may reapply to take the license examination
6 12 again. However, if the applicant fails the
6 13 examination twice within a one-year period, the
6 14 applicant must wait one year from the last date of
6 15 examination to reapply.

6 16 Sec. _____. NEW SECTION. 545A.8 NONRESIDENT
6 17 LICENSE.

6 18 1. An auctioneer license, auction clerk or auction
6 19 cashier license, or auction service license from a
6 20 nonresident may be issued by the commission as
6 21 follows:

6 22 a. If the application is accompanied by a
6 23 certified copy of an auctioneer license, auction clerk
6 24 or auction cashier license, or auction service license
6 25 issued to the applicant by the applicant's state of
6 26 residence, and the commission has determined that the
6 27 applicant's state has substantially equivalent
6 28 licensing requirements, and only if the applicant's
6 29 state extends similar recognition and courtesies to
6 30 this state, the commission shall accept the license as
6 31 proof of the applicant's professional competence and
6 32 shall waive the course of study and examination
6 33 requirements of section 545A.7.

6 34 b. If an application is received from a
6 35 nonresident of this state where the applicant's state
6 36 of residency does not have an auctioneer license,
6 37 auction clerk or auction cashier license, or auction
6 38 service license requirement, the commission may issue
6 39 a nonresident license to the applicant if the
6 40 applicant meets the requirements of section 545A.6 and
6 41 all other application requirements.

6 42 2. The commission may issue a license to a
6 43 nonresident applicant for an associate auctioneer
6 44 license if the applicant meets the requirements of
6 45 section 545A.6 and all other application requirements.

6 46 3. A nonresident applying for a license pursuant
6 47 to this section shall file a written power of attorney
6 48 designating the secretary of state as the agent for
6 49 service of process in the event of any suit against
6 50 the nonresident person, and submitting to the
7 1 jurisdiction of the courts of this state. A
7 2 nonresident who has a duly appointed resident agent
7 3 for service of process as provided by law is not
7 4 required to designate the secretary of state as the
7 5 nonresident's agent. The secretary of state is
7 6 allowed to collect fees as provided by law for
7 7 designating resident agents. The secretary shall be
7 8 furnished with a copy of any designation of the
7 9 secretary of state or of a resident agent, with the
7 10 copy to be certified by the secretary of state.

7 11 4. A licensed nonresident auction clerk or auction
7 12 cashier and licensed nonresident auction service must
7 13 hold an Iowa sales tax permit.

7 14 Sec. _____. NEW SECTION. 545A.9 LICENSE
7 15 CERTIFICATE.

7 16 1. A license certificate issued under this chapter
7 17 shall bear the signature or facsimile signature of a

7 18 member of the commission and a license number assigned
7 19 by the commission.

7 20 2. No less than ninety days prior to the
7 21 expiration of a licensee's license, the commission
7 22 shall issue a renewal notice to each licensee.

7 23 Sec. _____. NEW SECTION. 545A.10 DENIAL,
7 24 SUSPENSION, OR REVOCATION OF LICENSE.

7 25 1. The rights of a holder of a license as a
7 26 licensed auctioneer, licensed associate auctioneer,
7 27 licensed auction clerk or auction cashier, or licensed
7 28 auction service may be revoked or suspended, or the
7 29 holder may be otherwise disciplined as provided in
7 30 this chapter. The commission may investigate the
7 31 actions of a licensee and may revoke or suspend the
7 32 rights of a licensee or otherwise discipline a
7 33 licensee for violation of this chapter or of a rule
7 34 adopted pursuant to this chapter. Violations shall
7 35 include, but are not limited to, the following acts or
7 36 omissions:

7 37 a. Procurement or attempt to procure a license
7 38 under this chapter by knowingly making a false
7 39 statement, submitting false information, refusing to
7 40 provide complete information in response to a question
7 41 in an application for license, or participating in any
7 42 form of fraud or misrepresentation.

7 43 b. Failure to meet the minimum qualifications
7 44 established by this chapter.

7 45 c. Continued and flagrant misrepresentations or
7 46 making false promises through agents, advertising, or
7 47 otherwise.

7 48 d. Failing to account for or remit, within a
7 49 reasonable time, any money or property belonging to
7 50 others that comes into the licensee's possession, or
8 1 commingling funds of others with the licensee's own or
8 2 failing to keep such funds of others in an escrow or
8 3 trust account.

8 4 e. Conviction, including a conviction based upon a
8 5 plea of guilt or nolo contendere, in a court of
8 6 competent jurisdiction of this state or any other
8 7 state of a crime which is substantially related to the
8 8 qualifications, functions, and duties of a person
8 9 engaged in the auction profession or involving moral
8 10 turpitude or a felony.

8 11 f. Failure or refusal without good cause to
8 12 exercise reasonable diligence in preparing an auction,
8 13 conducting an auction, or completing an auction.

8 14 g. A violation of the uniform commercial code,
8 15 chapter 554, in the conduct of an auction.

8 16 2. Before denying an application for a license or
8 17 before suspending or revoking any license, the
8 18 commission shall in all cases set the matter for a
8 19 hearing and shall, at least thirty days before the
8 20 date set for the hearing, notify in writing the
8 21 applicant or licensee of the charges made against the
8 22 applicant or licensee, or of the question to be
8 23 determined, including notice of when and where the
8 24 hearing will be held.

8 25 3. The applicant or licensee is entitled to an
8 26 opportunity to be present and to be heard in person or
8 27 by counsel and to have an opportunity to offer
8 28 evidence by oral testimony, by affidavit, or by
8 29 deposition.

8 30 4. Written notice may be served by delivery of the
8 31 notice personally to the applicant or licensee or by
8 32 mailing the notice by certified mail to the last known
8 33 mailing address of the applicant or licensee. If the
8 34 applicant or licensee is an associate auctioneer, the
8 35 commission shall also notify the auctioneer employing
8 36 the associate auctioneer by mailing the notice by
8 37 certified mail to the employing auctioneer's last
8 38 known address.

8 39 5. The hearing shall be conducted pursuant to
8 40 chapter 17A.

8 41 6. If, after hearing, the commission determines
8 42 that a license should be denied, revoked, or
8 43 suspended, the applicant or licensee has thirty days
8 44 in which to appeal the commission's decision to the
8 45 district court of the county in which the
8 46 disqualification or violation is alleged to have
8 47 occurred.

8 48 Sec. _____. NEW SECTION. 545A.11 INACTIVE LICENSE.

8 49 A licensee who does not engage in any activity for
8 50 which a license under this chapter is required during
9 1 the year succeeding the expiration of the license
9 2 shall notify the commission to place the licensee on a
9 3 list of inactive licensees and the licensee shall not
9 4 be required to pay a license renewal fee for as long
9 5 as the licensee remains inactive and annually notifies
9 6 the commission of such inactive status. In order to
9 7 resume engaging in an activity for which a license
9 8 under this chapter is required, the licensee shall
9 9 notify the commission and remit the appropriate
9 10 renewal fee for the current renewal period.

9 11 Sec. _____. NEW SECTION. 545A.12 AUCTIONEER
9 12 RECOVERY AND EDUCATION FUND ESTABLISHED == PURPOSE.

9 13 1. a. An auctioneer recovery and education fund
9 14 is created in the state treasury under the control of
9 15 the commission.

9 16 b. In addition to the license fees collected
9 17 pursuant to this chapter, upon renewal of every
9 18 auction clerk or auction cashier and auction service
9 19 license, the commission, in its discretion and based
9 20 upon the needs of the commission, may assess every
9 21 licensee an amount not to exceed fifty dollars per
9 22 year to be deposited in the auctioneer recovery and
9 23 education fund.

9 24 c. In addition to the license fees collected
9 25 pursuant to this chapter, an applicant for an initial
9 26 license shall pay an additional amount of fifty
9 27 dollars, but upon renewal shall pay the same fee as
9 28 other licensees.

9 29 2. Moneys in the fund shall be used for the
9 30 following purposes:

9 31 a. Payment to a person aggrieved by a licensee as
9 32 the result of a violation of this chapter or rules
9 33 adopted pursuant to this chapter. Payment is to be
9 34 made upon the entry of a final order entered by the
9 35 commission or by a court. The commission is
9 36 authorized to pay to the aggrieved person or persons
9 37 an aggregate amount not to exceed fifty thousand
9 38 dollars against any one licensee, provided that the
9 39 licensee has refused to pay the claim within a period
9 40 of twenty days of entry of a final order and provided
9 41 further that the amount or amounts of money in
9 42 question are certain and liquidated.

9 43 b. The commission shall attempt to maintain a
9 44 minimum level of two hundred thousand dollars in the
9 45 fund for recovery and guaranty purposes. All moneys
9 46 in the fund may be invested in the same manner as
9 47 funds of the Iowa public employees' retirement system
9 48 and the interest from the investments shall be
9 49 deposited to the credit of the fund. Sufficient
9 50 liquidity shall be maintained so that moneys are
10 1 available to satisfy any and all claims, subject to
10 2 available funds, which may be processed through the
10 3 commission by means of administrative hearing as
10 4 outlined in this chapter.

10 5 c. The commission, in its discretion, may use any
10 6 funds in excess of the two hundred thousand dollar
10 7 level for any of the following purposes:

10 8 (1) To carry out the advancement of education and
10 9 research in the auction field for the benefit of
10 10 licensees, and for improving the efficiency of the
10 11 auction profession.

10 12 (2) To underwrite educational seminars and other
10 13 forms of education projects for the use and benefit
10 14 generally of licensees.

10 15 (3) To establish an auction chair or courses at
10 16 state institutions of higher learning for the purpose
10 17 of making the courses available to licensees and the
10 18 general public.

10 19 (4) To contract for particular research projects
10 20 relating to the auction profession.

10 21 (5) To sponsor, contract for, and to underwrite
10 22 any and all other educational and research projects of
10 23 a similar nature having to do with the advancement of
10 24 the auction profession.

10 25 (6) To cooperate with associations of auctioneers
10 26 and any other groups for the enlightenment and
10 27 advancement of licensees.

10 28 (7) To increase the level of the auctioneer
10 29 recovery and education fund above two hundred thousand

10 30 dollars.

10 31 (8) To augment the regular trust and agency
10 32 account of the commission.

10 33 3. a. If a licensee is found guilty of violation
10 34 of this chapter or of the rules adopted pursuant to
10 35 this chapter, and if the amount of money lost by the
10 36 aggrieved party or parties is in dispute or cannot be
10 37 determined accurately, the liability of the licensee
10 38 and the amount of damages shall be determined by the
10 39 district court in the county where the alleged
10 40 violation took place, provided that the commission has
10 41 previously determined that a violation has occurred
10 42 and a final order has been entered.

10 43 b. If a final order of the commission has been
10 44 entered and the rights of the licensee have been
10 45 finally adjudicated, the district court shall make a
10 46 finding as to the monetary damages to be awarded.

10 47 c. When a final order has been entered by the
10 48 district court, or after appeal, if any, and upon
10 49 certification to the commission, the aggrieved party
10 50 or parties shall be paid an amount or amounts in the
11 1 aggregate not to exceed fifty thousand dollars by the
11 2 commission, and the license held by the licensee
11 3 against whom the claim was made by the aggrieved party
11 4 shall be suspended at a minimum until the licensee has
11 5 reimbursed the auctioneer recovery and education fund
11 6 for all amounts paid to the aggrieved party as a
11 7 result of the violation.

11 8 d. Upon payment by the commission of any sum to
11 9 the aggrieved party, the commission shall be
11 10 subrogated to all rights of the aggrieved party to the
11 11 extent of the payment and the aggrieved party shall to
11 12 the extent of the payment assign such right, title,
11 13 and interest in the judgment to the commission.

11 14 e. A claim for monetary damages or relief from the
11 15 auctioneer recovery and education fund must be made in
11 16 writing on a proof of loss form submitted to the
11 17 commission within six months of the act of the
11 18 auctioneer giving rise to the loss. Failure to file
11 19 such claims within the six-month period shall bar the
11 20 claim. Additional evidence shall be submitted by the
11 21 claimant if required by the commission.

11 22 f. Notwithstanding any other provisions of this
11 23 chapter, an unreimbursed amount greater than fifty
11 24 thousand dollars shall not be paid by the commission
11 25 on account of any one licensee, regardless of the
11 26 length of time, the number of claims or claimants, or
11 27 the size of the claims, individually or in the
11 28 aggregate. Upon reimbursement of the fund by the
11 29 licensee for all amounts paid, future claims timely
11 30 filed with the commission regarding the licensee
11 31 concerning different matters may be received pursuant
11 32 to this section.

11 33 g. A claim shall not be approved under this
11 34 section for amounts which, in the aggregate, exceed
11 35 the maximum payable in effect at the time of the act
11 36 or acts of the licensee giving rise to the claims on
11 37 account of any one licensee. A statutory increase in
11 38 the established maximum shall not apply retroactively.

11 39 4. This section is not intended to substitute for,
11 40 circumvent, or duplicate other remedies existing at
11 41 law for claimants or potential claimants, but
11 42 constitutes a last resort for aggrieved persons who
11 43 would not, but for the provisions of this section, be
11 44 able to recover their losses by any other means
11 45 available. The commission shall have full discretion
11 46 to require that claimants exhaust all other remedies
11 47 prior to proceeding under this section.

11 48 Sec. _____. NEW SECTION. 545A.13 PREEMPTION.

11 49 A political subdivision of this state shall not
11 50 levy or collect any license fee, tax, or other fee, or
12 1 require the licensing in any manner of any auctioneer,
12 2 associate auctioneer, auction clerk or auction
12 3 cashier, or auction service subject to this chapter.

12 4 Sec. _____. NEW SECTION. 545A.14 TRUST ACCOUNT
12 5 REQUIREMENTS.

12 6 1. A licensee shall maintain a trust account as
12 7 provided in this section for the deposit and dispersal
12 8 of all proceeds collected on the behalf of another
12 9 person, including sales tax, if applicable. The
12 10 account shall be separate from all other trust

12 11 accounts of the holder and may be an interest-bearing
12 12 account. For purposes of this section, "licensee"
12 13 means a licensed auction clerk or auction cashier or
12 14 licensed auction service.

12 15 2. A licensee required to maintain a trust account
12 16 pursuant to this section shall report to the
12 17 commission the name and mailing address of the
12 18 financial institution where the trust account is
12 19 maintained and the trust account number. A consent
12 20 form shall also be furnished to the commission from
12 21 the licensee and the financial institution to permit
12 22 the examination and audit of the trust account by the
12 23 commission or the commission's representative.

12 24 3. Auction trust accounts shall be maintained as
12 25 follows:

12 26 a. A resident licensee shall maintain a trust
12 27 account in a federally insured financial institution
12 28 located in this state.

12 29 b. A nonresident licensee licensed in such
12 30 licensee's state of residence shall maintain a trust
12 31 account in this state in the same manner as provided
12 32 for a resident licensee under paragraph "a", or in a
12 33 federally insured financial institution in the
12 34 licensee's state of residence and the licensee shall
12 35 comply with subsection 2.

12 36 c. A nonresident licensee who is a resident of a
12 37 state that does not provide for the licensing of
12 38 auctioneers, auction clerks or auction cashiers, or
12 39 auction services must maintain an auction trust
12 40 account in a federally insured Iowa financial
12 41 institution and the licensee shall comply with
12 42 subsection 2.

12 43 4. An auction trust account may contain sufficient
12 44 personal funds of the licensee to maintain that
12 45 account.

12 46 Sec. _____. NEW SECTION. 545A.15 INVESTIGATION OF
12 47 COMPLAINT == ACTION.

12 48 The commission, upon its own motion, may, or on the
12 49 written and verified complaint of any person aggrieved
12 50 by the actions of an auctioneer, associate auctioneer,
13 1 auction clerk or auction cashier, or an auction
13 2 service in the conduct of an auction, shall,
13 3 investigate alleged violations and complaints of this
13 4 chapter by a licensed or unlicensed auctioneer,
13 5 associate auctioneer, auction clerk or auction
13 6 cashier, or auction service.

13 7 Sec. _____. NEW SECTION. 545A.16 PENALTIES.

13 8 1. A person who acts as an auctioneer, associate
13 9 auctioneer, auction clerk or auction cashier, or
13 10 auction service without first obtaining a license
13 11 under this chapter commits a simple misdemeanor.

13 12 2. A person who violates any other provisions of
13 13 this chapter, or a rule adopted by the commission in
13 14 the administration of this chapter for which no other
13 15 penalty is provided, commits a simple misdemeanor.

13 16 3. The commission shall adopt rules providing for
13 17 civil penalties in amounts as permitted by state law
13 18 and as determined by the commission.

13 19 Sec. _____. NEW SECTION. 545A.17 AUCTION
13 20 CONTRACTS.

13 21 1. A licensee and each seller of personal property
13 22 at an auction which is to be conducted or managed
13 23 within the state shall enter into a written contract.
13 24 A contract between a licensee and a seller of personal
13 25 property must be signed by all parties.

13 26 2. The written contract, at a minimum, shall
13 27 contain the following:

13 28 a. The auctioneer's, auction clerk's or auction
13 29 cashier's, or the auction service's name, trade or
13 30 business name, and the license number of the
13 31 auctioneer, auction clerk or auction cashier, or
13 32 auction service.

13 33 b. The name of the owner or consignor of the
13 34 property to be auctioned.

13 35 c. A general description of the property to be
13 36 sold.

13 37 d. Any restriction relating to conducting the
13 38 auction and a statement indicating whether the
13 39 auctioneer, auction clerk or auction cashier, or
13 40 auction service is authorized to purchase at the
13 41 auction.

13 42 e. A description of all services to be provided
13 43 and the fee for services, including whether a buyer's
13 44 premium will be assessed and, if so, the amount of the
13 45 buyer's premium.

13 46 f. A statement indicating which party is
13 47 responsible for advertising and other auction
13 48 expenses.

13 49 g. The date, location, and starting time of the
13 50 auction, if known.

14 1 h. A statement as to the responsibilities of each
14 2 party for the auction.

14 3 i. A statement by the seller that the seller has
14 4 title or right to sell all property to be sold at
14 5 auction with identification of those items which are
14 6 subject to an encumbrance or lien and the disclosure
14 7 of the person or entity holding an encumbrance or
14 8 lien.

14 9 3. An owner or consignor of the property to be
14 10 auctioned shall be furnished with a copy of the
14 11 contract.

14 12 Sec. _____. NEW SECTION. 545A.18 ADVERTISING
14 13 REQUIREMENTS.

14 14 1. An auctioneer, auction clerk or auction
14 15 cashier, or auction service who advertises to hold,
14 16 conduct, or act as an auction clerk or auction cashier
14 17 at an auction within this state shall indicate in the
14 18 advertisement the name and license number of the
14 19 auctioneer, auction clerk or auction cashier, or
14 20 auction service.

14 21 2. This section does not pertain to advertisements
14 22 for an auction that is to be held in another state.

14 23 Sec. _____. NEW SECTION. 545A.19 EMPLOYMENT BY
14 24 AUCTION SERVICE.

14 25 A person licensed under this chapter shall not act
14 26 as an auctioneer, associate auctioneer, or auction
14 27 clerk or auction cashier for an auction service unless
14 28 the auction service is licensed under this chapter.

14 29 Sec. _____. NEW SECTION. 545A.20 EXEMPT
14 30 TRANSACTIONS.

14 31 This chapter does not apply to a person who engages
14 32 in any of the following:

14 33 1. An auction conducted by order of the court
14 34 pursuant to Title 11 of the United States Code
14 35 relating to bankruptcy.

14 36 2. An auction conducted by an employee of the
14 37 United States, or of this state or its political
14 38 subdivisions, in the course and scope of the
14 39 employee's employment.

14 40 3. An auction conducted by a charitable or
14 41 nonprofit organization, if the auctioneer receives no
14 42 compensation.

14 43 4. An auction conducted by an individual of that
14 44 individual's own property if the individual is not
14 45 engaged in the business of selling such property as an
14 46 auctioneer on a recurring basis.

14 47 5. A foreclosure auction of realty conducted
14 48 personally by a trustee under a deed of trust.

14 49 6. A foreclosure auction of personal property
14 50 conducted personally by the mortgagee, or other
15 1 secured party, or an employee or agent of the
15 2 mortgagee or other secured party acting in the course
15 3 and scope of the employee's employment, if the
15 4 employee or agent is not engaged otherwise in the
15 5 auction business and if all property for sale at
15 6 auction is subject to a security agreement.

15 7 7. A sale conducted by sealed bid.

15 8 8. An auction conducted in a course of study for
15 9 auctioneers or auction clerks or auction cashiers and
15 10 conducted for student training purposes.

15 11 9. An auction conducted by a posted stockyard or
15 12 market agency as defined by the federal Packers and
15 13 Stockyard Act, 1921, as amended, 7 U.S.C. } 181 et
15 14 seq.

15 15 10. An auction of livestock conducted by a
15 16 nonprofit livestock trade association chartered in
15 17 this state if the auction involves only the sale of
15 18 livestock of the trade association's members.

15 19 11. An auction conducted by a charitable or
15 20 nonprofit organization chartered in this state if the
15 21 auction involves only the property of the organization
15 22 or its members and the auction is part of an event

15 23 that is organized under state or local authority.
15 24 12. A motor vehicle auction, including the auction
15 25 of wrecked, salvage, or abandoned vehicles.
15 26 Sec. ____ INITIAL IOWA AUCTION AND AUCTIONEER
15 27 COMMISSION APPOINTMENTS. The initial members of the
15 28 Iowa auction and auctioneer commission shall be
15 29 appointed to the following terms:
15 30 1. Two members shall be appointed for a term of
15 31 three years.
15 32 2. Two members shall be appointed for a term of
15 33 two years.
15 34 3. One member shall be appointed for a term of one
15 35 year.>
15 36 #2. Title page, by striking lines 1 and 2 and
15 37 inserting the following: 15 38 of property, by making changes relating to the real
15 39 estate commission and provisions applicable to a
15 40 licensed real estate broker, by providing for the
15 41 licensing of auctioneers, and making>.
15 42
15 43
15 44 _____
15 45 S. OLSON of Clinton
15 46 HF 448.706 80
15 47 rn/cl